IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 451 OF 1996

The State of Maharashtra ....Appellant.
(Orig.complt.)

V/s

1. Nagappa Mhalappa Bansode
2. Sidharam Revanshidha Surwase,
3. Dhondappa Mhalappa Warwate,
4. Mallinath @ Mallikarjun Mhalappa Warwate,
5. Basanna Khandappa Surwase,
6. Mhalappa Shamrao Surwase,
7. Mallikarjun Bhimsha Bandichode,
8. Mallinath Hanmant Surwase,
9. Babu Jatyappa Surwase.. .... Respondents.
(Orig.Accd. Nos. 1 to 9)

Mr.A.M. Shringarpure, APP for the State.

CORAM: V.G. PALSHIKAR
AND
R.C. CHAVAN, JJ.

14th July, 2005.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of acquittal passed by the learned Jt. District Judge and Additional Sessions Judge, Solapur in Sessions Case No.69 of 1995 on 30.1.1996 the State-appellant has preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed

before us.

2. With the assistance of the learned Public Prosecutor we have scrutinized the entire evidence on and reappreciated the same.

3. The prosecution story is that the accused and the deceased were from the same village known as Nandani, Taluka South Solapur. One Anil S. Narote the complainant is friend of Somling Koli (deceased and his brothers). Sometime in the year 1990 or 1995 respondent No.1 and other three persons assaulted brother of Somling (deceased) and therefore there was a criminal case registered against respondent No.1 and others. After the said incident Somling and his brothers left the village Nandani and were staying at Solapur. On 30.10.1994 Somling came back to village Nandani to see his parents. At about 5.30 p.m. Somling and two others were abusing the accused No.1 and his friends. At about 11.00 p.m. Anil Narote and Somling along with others were sitting in front of house of Nabillal Master below the street light. At that time complainant heard accused No.1 calling upon Somling “why he is bullying others by coming to village”. All the accused gathered in front of the shop of Shri Khichade with sticks in their hands and started assaulting said Somling. Accused Nos.2, 3 and 5 were having sticks in their hands and the accused No.1 picked up one stone and assaulted Somling on his head. Others assaulted him with kick blows. The complainant tried to rescue Somling but seeing the accused running towards him, the complainant ran towards his house. Kuber

and Shivanand friends of Somling also ran away to their house. At about 5.00 a.m. on the next day they went to Police Patil and narrated to him the incident. Police Patil came to the spot and saw Somling lying in a pool of blood, his head was broken and brain protruded out. Police Patil asked his son to give information to Mandlrup Police and at about 6.45 a.m. Mandrup Police Station received a telephone call in respect of the said incident. Police party arrived at the spot and carried out the necessary panchnamas. Accused 2, 4, 6, 7 and 8 were arrested by Asst.Sub Inspector Nimbalkar in the presence of panch witnesses on the same. However accused Nos.3, 5 and 9 came to be arrested on 1.11.1994. Accused No.2 on 2.11.1994 produced the stick used in the offence. On 16.12.1994 accused No.1 came to be arrested and an offence came to be registered under sections 147, 148 and 302 read with section 149 of the Indian Penal Code at Mandrup police station. The defence of the accused being of total denial they claimed to be tried. The prosecution has examined as many as 19 witnesses in order to bring home the guilt and the learned trial Judge on the basis of evidence of these witnesses came to the conclusion of acquittal and acquitted the accused.

4. As observed above the order of acquittal dated 30.1.1996 passed by the learned trial Judge, Solapur in Sessions Case No.69 of 1995 is the subject matter of this appeal at the instance of the Government of Maharashtra the appellant. Out of the 19 prosecution witnesses examined P.W.15 is

Dr.Vijaykumar Bet who conducted the post mortem on the body of the victim Somling and has stated that the death was caused due to violent assault and thus proved that it was homicidal. With the help of eye witnesses and other witnesses and recoveries made the prosecution sought to prove that the accused persons had formed unlawful assembly with the common object of teaching a lesson to Somling and assaulted him and in that assault Somling met with homicidal death. However as will be seen from the impugned judgment there are material contradictions and substantial omissions in the deposition of these witnesses. From the narration of several witnesses it is obvious and the prosecution has succeeded in proving that there was outstanding enmity between the parties some years prior to the date of incident. The enmity was to such an extent that the accused persons had earlier prosecuted the victim and the victim had for sometime left the village. We have therefore to appreciate the evidence in the light of the established fact that there was animosity between the complainant part and the accused party. Consequently it is necessary that in such circumstances the ocular testimony is duly corroborated by independent evidence both oral and documentary if necessary.

5. It is established by the prosecution that the accused was resident of the village and at the time of incident the victim who came from outside accused party was first to challenge the victim. Accordingly scrutiny of eye witnesses account of the witnesses examined by the prosecution discloses clearly a

common thread of desire to implicate the accused than to state the truth before the Court. The learned trial Judge was therefore absolutely right in coming to the conclusion that the testimony of the eye witnesses was not trustworthy.

6. The links effected and sought to be proved are also doubtful in nature and in any event, they would have corroboration value in this case as the prosecution wants the Court to believe that the eye witnesses are the truthful persons and are telling the correct account of how the incident took place. When the evidence of eye witnesses is not trust worthy, when the supporting evidence by way of recoveries etc. is not adequate to coming to the conclusion of guilt of the accused the only alternate left for the Court of law is to acquit the accused. The learned trial Judge has done so. He has marshaled the facts very well. His application of law is correct. The learned Judge has from time to time relied upon decision of this Court and the Supreme Court of India and has based his findings on solid legal footing.

7. In our view, it would be stretching the evidence too far for holding that the accused persons are guilty. In any event, the maximum that can be said for the prosecution in the present case is that the view that the accused could be guilty is also possible from the totality of evidence on record. But it is an established canon of law that if two views on appreciation of evidence are available one consistent with the innocence of the accused is liable to be taken. The learned trial Judge having taken that view we see no reason to interfere and our

reappreciation of evidence also leads us to the same conclusions. We therefore affirm the findings and order recorded by the learned trial Judge with the result that the appeal fails and is dismissed.